



California Fair Political Practices Commission

April 22, 1987

Richard M. Moss
General Manager
Friant Water Users Authority
854 N. Harvard Avenue
Lindsay, CA 93247

Re: Your Request for Advice
Our File No. A-87-094

Dear Mr. Moss:

You have written on behalf of the Friant Water Users Authority seeking confirmation that the members of its advisory committee need not be designated in the Authority's conflict of interest code.

QUESTION

Must the members of the Friant Water Users Authority Advisory Committee be designated in the agency's conflict of interest code?

CONCLUSION

Based upon the present lack of delegated authority to the advisory committee, its members need not be designated in the agency's conflict of interest code.

FACTS

The Authority is a joint powers authority consisting of 23 public districts utilizing water from the Friant-Kern Canal. The Authority is managed by a general manager, with policy and major decisions made by a board of directors. Each member district of the Authority selects one representative to serve on the Authority's board of directors. Generally, the individual selected by a member district as its representative to the Authority's board is also a member of that district's own board of directors.

The Authority also has an advisory committee. Each of the Authority's 23 member districts also selects one representative to the advisory committee. The advisory committee members are

usually engineers and/or managers of the Authority's member districts. The advisory committee generally takes up more technical questions relating to the use, delivery and administration of waters in the Friant-Kern Canal. The advisory committee, like the board of directors, meets once per month at regular meetings.

Under the Authority's Joint Powers Agreement, the board of directors is empowered to delegate certain functions for purposes of program development, policy formulation and program implementation to the advisory committee. However, the board of directors has not delegated any such powers to the advisory committee. Further, even if such a delegation were to occur, the advisory committee cannot expend any portion of the Authority's budget without the approval of the board of directors.

To date, the advisory committee has had no authority to set or implement policy or to make any other decisions which are binding upon the Authority. Instead, the advisory committee has typically studied specific issues and made recommendations to the board of directors. None of the advisory committee's recommendations are implemented without the approval of the board of directors. The experience of the Authority is that advisory committee recommendations are reviewed critically by the board of directors. Advisory committee recommendations have, to date, been both accepted and rejected by the board of directors. In some cases, the advisory committee's recommendations have been accepted with modifications. Accordingly, the board of directors does not act as simply a "rubber stamp" for advisory committee recommendations. While the recommendations and conclusions of the advisory committee are of value to the Authority and its board of directors, the advisory committee itself has no real or de facto power to make decisions which could affect economic interests.

ANALYSIS

The Political Reform Act (the "Act")^{1/} requires that each agency adopt a conflict of interest code. The code must designate those officials and employees of the agency who make

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

or participate in making governmental decisions which may affect private financial interests. (Sections 87200-302.) Disclosure categories are to be assigned which require each designated employee to disclose those types of private financial interests which could be affected by his or her decisions. (Section 87302.)

The term "designated employee" is defined in Section 82019 as follows:

"Designated employee" means any officer, employee, member or consultant of any agency whose position with the agency;

* * *

(c) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

* * *

"Designated employee" does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission or other such entity of the State Bar of California.

(Emphasis added.)

Based upon the facts which you have provided to us, it is our conclusion that the members of the advisory committee serve a solely advisory function. They do not have decision-making authority, and thus need not be designated in the Authority's conflict of interest code. (See Regulation 18700(a)(1).) Therefore, they will not be required to submit disclosure statements. However, if the powers of the advisory committee or its role change in the future, a reevaluation should be made.

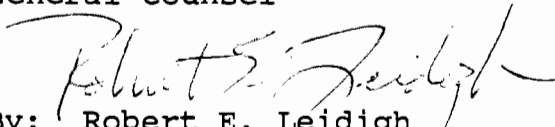
Lastly, you have indicated that some members of the advisory committee also serve as alternates representing their respective agencies on the board of directors. You are correct in your conclusion that in this latter capacity they must continue to file the appropriate disclosure statements.

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I trust that this letter adequately responds to your request for confirmation of your understandings. If there are any questions about this letter, I may be reached at (916) 322-5901. For general questions about your agency's conflict of interest code, continue to contact Ms. Jeanette Turvill, Legal Assistant, at the same phone number.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh

FRIANT WATER USERS AUTHORITY

854 N. Harvard Ave. • Lindsay, CA 93247 • (209) 562-6305

AUTHORITY OFFICERS

Chairman
W. D. Luton

Vice Chairman
John P. Gilbert

Secretary-Treasurer
Harvey S. Chase

Attorney
A. B. Ewell, Jr.

General Manager
Richard M. Moss

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March 10, 1987

Ms. Jeanette E. Turvill
Legal Assistant
California Fair Political
Practices Commission
P. O. Box 807
Sacramento, California 95804-0807

MEMBER AGENCIES

Alpaugh Irrigation District
Arvin-Edison Water Storage District
Atwell Island Water District
Delano-Earlimart Irrigation District
Exeter Irrigation District
Fresno Irrigation District
International Water District
Ivanhoe Irrigation District
Kern-Tulare Water District
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Lindmore Irrigation District
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Lower Tule River Irrigation District
Orange Cove Irrigation District
Pixley Irrigation District
Rag Gulch Water District
Saucelito Irrigation District
Shafter-Wasco Irrigation District
Southern San Joaquin Municipal
Utility District
Stone Corral Irrigation District
Teapot Dome Water District
Terra Bella Irrigation District
Tulare Irrigation District

Re: Friant Water Users Authority
Advisory Committee

Dear Ms. Turvill:

The Friant Water Users Authority hereby requests the Commission's confirmation that the members of the Authority's Advisory Committee are not required to file Statements of Economic Interest pursuant to the Authority's Conflict of Interest Code or the Political Reform Act. The relevant facts are as follows.

The Authority is a joint powers authority consisting of 23 public districts utilizing water from the Friant-Kern Canal. The Authority is managed by a General Manager, with policy and major decisions made by a Board of Directors. Each member district of the Authority selects one representative to serve on the Authority's Board of Directors; generally, the individual selected by a member district as its representative to the Authority's Board is also a member of that district's own Board of Directors.

The Authority also has an Advisory Committee. Each of the Authority's 23 member districts also selects one representative to the Advisory Committee. The Advisory Committee members are usually engineers and/or managers of the Authority's member districts, and the Advisory

Ms. Jeanette E. Turvill
Legal Assistant
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Committee generally takes up more technical questions relating to the use, delivery and administration of waters in the Friant-Kern Canal. The Advisory Committee, like the Board of Directors, meets once per month at regular meetings.

Under the Authority's Joint Powers Agreement, the Board of Directors is empowered to delegate certain functions for purposes of program development, policy formulation and program implementation to the Advisory Committee. However, the Board of Directors has not delegated any such powers to the Advisory Committee. Further, even if such a delegation were to occur, the Advisory Committee cannot expend any portion of the Authority's budget without the approval of the Board of Directors.

To date, the Advisory Committee has had no authority to set or implement policy or to make any other decisions which are binding upon the Authority. Instead, the Advisory Committee has typically studied specific issues and made recommendations to the Board of Directors. None of the Advisory Committee's recommendations are implemented without the approval of the Board of Directors, and the experience of the Authority is that Advisory Committee recommendations are reviewed critically by the Board of Directors. Advisory Committee recommendations have, to date, been both accepted and rejected by the Board of Directors, and in some cases the recommendations have been accepted with modifications. Accordingly, the Board of Directors does not act as simply a "rubber stamp" for Advisory Committee recommendations and, while the recommendations and conclusions of the Advisory Committee are of value to the Authority and its Board of Directors, the Advisory Committee itself has no real or de facto power to make decisions which could affect economic interests.

It is therefore the Authority's view that the members of the Advisory Committee should not file Statements of Economic Interest by virtue of their membership on the Advisory Committee alone. Of course, those members of the Advisory Committee who hold other positions with the Authority (for example, Advisory Committee members who

Ms. Jeanette E. Turvill
Legal Assistant
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are also Alternates to the Board of Directors) which would require the filing of Statements of Economic Interest would continue to make the appropriate filings required by their other positions with the Authority.

Please confirm to us that the Authority's conclusions with respect to the obligation of the members of its Advisory Committee to file Statements of Economic Interest is correct. Should you have any questions or require further information, please feel free to contact me.

Very truly yours,

FRIANT WATER USERS AUTHORITY

By: 
Richard M. Moss
General Manager

RMM:dt

cc: A. B. Ewell, Jr., Esquire



California Fair Political Practices Commission

March 24, 1987

Richard M. Moss
Friant Water Users Authority
854 Harvard Avenue
Lindsay, CA 93247

Re: 87-094

Dear Mr. Moss:

Your letter requesting advice under the Political Reform Act was received on March 24, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

CA FPPC Adv. A-91-534

(Cite as: 1992 WL 795354, *2 (Cal.Fair.Pol.Prac.Com.))

...

(2) Received by or made at the behest of:

...

(D) An organization formed or existing primarily for political purposes.... Goods and services provided to the Committee for which full and adequate consideration is not paid within the normal course of business are contributions. (Section 82015.) Such contributions are disclosed as "in-kind" loans if payment for the goods or services will be made at a later date. A contribution in the form of an in-kind loan is disclosed on Schedule C of the Form 419 (Ballot Measure Committee Campaign Statement) filed for the period in which the services were provided. If a payment is made on the loan during that reporting period, the payment is disclosed on Schedule E. If payment is not made during the reporting period, disclose the in-kind loan as an accrued expense on Schedule F.

Certain payments incurred in connection with qualifying a measure for the ballot are not contributions or reportable campaign expenditures under the Act. (Sections 82015 and 82025.) In the Fontana Opinion (1976, 2 FPPC Ops. 25), [FN3] the Commission determined that expenditures for legal expenses incurred prior to the time petitions are circulated to qualify a measure for the ballot are neither expenditures nor contributions. (Beatty Advice Memo, No. T-87-092.)

All payments made at the behest of the Committee are contributions, including loan repayments made by the Corporation on the Committee's behalf. (Section 82015, Regulation 18215, supra, and Seely Advice Letter, No. A-86-269.) This advice does not change if the Committee and the Corporation are jointly responsible for payment of a debt. Therefore, any debt for which the Committee is either fully or jointly responsible must be disclosed on the Committee's campaign disclosure statement.

In any reporting period in which the Corporation makes a payment on behalf of the Committee, the Committee must disclose the Corporation's payment as a monetary contribution on Schedule A and as an expenditure on Schedule E, or a payment of an accrued expense on Schedule F, whichever is applicable. A notation should be made on the campaign statement indicating that the expenditure was made from the Corporation's account.

*3 Please do not hesitate to contact me at (916) 322-5662 if you have additional questions.

Sincerely,

Scott Hallabrin